

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**SB 2458 - HB 2661**

March 7, 2022

**SUMMARY OF BILL AS AMENDED (014713):** Prohibits pharmacy benefits managers (PBM) from listing a pharmaceutical product on a maximum allowable cost list unless the product is generally available in the state, or is determined to be obsolete. Requires PBMs to provide access to its updated maximum allowable cost list to each pharmacy that is subject to the list. Requires a PBM to provide reasonable appeal procedures to allow a pharmacy to challenge maximum allowable costs and reimbursements for pharmaceutical products on the maximum allowable cost list.

Prohibits a PBM from reimbursing a pharmacy or pharmacist an amount less than the amount reimbursed to a PBM affiliate for providing the same pharmaceutical product. Allows a pharmacy or pharmacist to decline providing a pharmaceutical product to a patient or PBM if the maximum allowable cost list results in the pharmacy or pharmacist being paid less than the acquisition cost of that product. Prohibits a PBM from paying a pharmacy dispensing a pharmaceutical product at a rate less than the amount paid by the Division of TennCare programs or from charging or collecting any form of remuneration that passes from a pharmacy to the PBM.

Authorizes a PBM to establish a preferred and non-preferred network of pharmacies, but prohibits the PBM from banning a pharmacy from participating in either network, so long as the pharmacy is licensed by the state and federal government.

Authorizes the commissioner of the Department of Commerce and Insurance (DCI) to promulgate rules to effectuate the appeals process, and if the commissioner of DCI does not institute an external appeals process, the expenses associated with external appeals must be paid from DCI's existing resources. States that a PBM or cover entity who fails to submit to the DCI Commissioner for approval is subject to sanctions.

**FISCAL IMPACT OF BILL AS AMENDED:**

**Increase State Expenditures - \$4,065,000/FY22-23  
\$4,063,700/FY23-24 and Subsequent Years**

**Increase Federal Expenditures - \$1,023,800/FY22-23 and Subsequent Years**

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Assumptions for the bill as amended:

- It is assumed that prohibiting certain pharmaceutical products from being on the maximum allowable cost list will not lead to a significant decrease in revenue accrued from these products.
- DCI and its Commissioner will be given authority to promulgate rules to effectuate the appeals process. This analysis assumes that the department will institute an external appeal process and, therefore, the expenses associated will not be paid from existing resources.
- DCI expects to contract this work to a third-party independent dispute resolution (IDR) company.
- The average charge of an IDR is about \$489. Assuming DCI will have 1,000 claims per year going through this appeal process, this will create a recurring expenditure of \$489,000 (1,000 x \$489). However, DCI plans to implement a rule where the party that loses the appeal must pay this cost, so assuming each party wins half of the appeals, it will lead to an increase in state expenditures of \$244,500 (\$489,000 x 50%).
- DCI will also require an additional Associate Counsel position to oversee this process, which will create a recurring increase in state expenditures of \$109,958 (\$88,356 salary + \$21,602 benefits) and \$6,100 for administrative cost allocation, and a one-time cost of \$1,300 for office equipment.
- Any sanctions that a PBM or covered entity is subjected to will be able to be handled within existing resources and will not create a significant increase in the court system.
- The proposed legislation states that the professional dispensing fee (PDF) must not be less than the amount paid by the TennCare program, which has an average cost of \$9.814. This will lead to a required PDF increase for CoverRx of \$6.814 per claim and for CoverKids of \$9.314 per claim, as current average PDF payments for such programs were \$3.00 and \$0.50, respectively.
- CoverRx has an average of 496,826 claims per year. Therefore, there would be a recurring increase in state expenditures of \$3,385,372 (\$6.814 x 496,826) since there is no federal match for this program.
- CoverKids has an average of 144,032 claims per year. Therefore, there would be a recurring increase in expenditures of \$1,341,514 (\$9.314 x 144,032). Since CoverKids is a Tennessee Children's Health Insurance Program, it is matched at a 76.315 percent federal rate. Therefore, this would lead to a recurring increase in state expenditures of \$317,738 (\$1,341,514 x 23.685%) and a recurring increase in federal expenditures of \$1,023,776 (\$1,341,514 x 76.315%).
- The precise impacts to the State Group Plan, the Local Education Plan, and the Local Government Plan are unknown at this time. However, it is assumed meeting the requirements of this proposed legislation will not have a significant impact on expenditures for possible drugs or the premiums paid by state and local government to maintain efficient self-funding.
- The total increase in state expenditures would be \$4,064,968 (\$244,500 + \$109,958 + \$6,100 + \$1,300 + \$3,385,372 + \$317,738) in FY22-23, and be \$4,063,668 (\$244,500 + \$109,958 + \$6,100 + \$3,385,372 + \$317,738) in FY23-24 and subsequent years.

## **IMPACT TO COMMERCE OF BILL AS AMENDED:**

### **Increase Business Revenue - \$5,215,900/FY22-23 and Subsequent Years**

Assumptions for the bill as amended:

- The proposed legislation will lead to a recurring increase of \$4,726,886 (\$3,385,372 + \$1,341,514) in fees collected by certain professional dispensers.
- The proposed legislation will also lead to an estimated recurring increase of \$489,000 collected by professional dispute resolution organizations.
- This will result in a total increase in business revenue of \$5,215,886 (\$4,726,886 + \$489,000) in FY22-23 and subsequent years.
- Additional commerce impacts may be realized; however, due to many unknown variables, such impacts cannot be quantified with reasonable certainty.
- One new state government job will be created by the proposed legislation.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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